

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

SIMPSON VENTURES, INC.,)
Plaintiff,)

v.)

MID-WEST METAL)
PRODUCTS)
COMPANY, INC.)
Defendant.)

Case No. 3:07-cv-00048 WHA-CSC

_____))
MID-WEST METAL)
PRODUCTS)
COMPANY, INC.,)
Counterclaimant,)

v.)

SIMPSON VENTURES, INC.,)
Counterdefendant.)

_____))

PLAINTIFF SIMPSON VENTURES, INC.’S
MOTION IN LIMINE TO EXCLUDE EXPERT REPORTS AND
TESTIMONY OF DEFENDANT’S EXPERT, BRET H. SMITH
UNDER DAUBERT V. MERRELL DOW PHARMACEUTICALS, INC.

COMES NOW the Plaintiff, Simpson Ventures, Inc. (hereinafter “Simpson”) and files this Motion in Limine under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and Kumho Tire Company v. Carmichael, 526 U.S. 137 (1999), and supporting authorities, seeking a ruling of this Court precluding testimony of a witness (Mr. Brett Smith) proffered as an expert by the Defendant

Mid-West Metal Product Company's ("Mid-West"). Simpson also seeks the exclusion of all expert reports produced by Mr. Smith from the trial of this action. In support of this Motion, Plaintiff also submits a Memorandum of Law and various supporting exhibits.

As is detailed in the supporting Memorandum, Mr. Smith is not qualified to testify as to patent invalidity or patent infringement because he admits that he is not a patent expert and admits that he has no experience, education or prior knowledge of patents. Mr. Smith's methodologies detailed in his reports are unreliable, including his incorrect understanding and application of the standards for both design patent invalidity and infringement. Mr. Smith admits to significant, material errors in his reports. Mr. Smith's testimony will not assist the trier of fact, nor will his reports.

Accordingly, Plaintiff does hereby respectfully request that the Court issue an order:

1. excluding Mr. Smith from testifying at trial as an expert regarding patent invalidity and infringement;
2. excluding any testimony, whether by affidavit, deposition or otherwise, of Mr. Smith as an expert regarding patent validity and infringement in connection with any summary judgment motion; and

3. excluding Mr. Smith's reports from being admitted into evidence or any other use thereof by Mid-West before the jury.

Accordingly, a Proposed Order is attached hereto as **Exhibit A**.

Respectfully submitted this 13th day of
August, 2008.

/s/ Arthur A Gardner
Arthur A. Gardner
GA Bar No. 283,995
Email: agardner@gardnergroff.com
GARDNER GROFF, GREENWALD
& VILLANUEVA, P.C.
2018 Powers Ferry Road, Suite 800
Atlanta, Georgia 30339
Tel: (770) 984-2300
Fax: (770) 984-0098
Attorneys for Plaintiff

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

SIMPSON VENTURES, INC.,)
Plaintiff,)

v.)

MID-WEST METAL)
PRODUCTS)
COMPANY, INC.)
Defendant.)

_____)

Case No. 3:07-cv-00048 WHA-CSC

MID-WEST METAL)
PRODUCTS)
COMPANY, INC.,)
Counterclaimant,)

v.)

SIMPSON VENTURES, INC.,)
Counterdefendant.)

_____)

[PROPOSED] ORDER

This Court having reviewed and considered the Plaintiff's PLAINTIFF SIMPSON VENTURES, INC.'S MOTION IN LIMINE TO EXCLUDE EXPERT REPORTS AND TESTIMONY OF DEFENDANT'S EXPERT, BRET H. SMITH UNDER *DAUBERT V. MERRELL DOW PHARMACEUTICALS, INC.*, including MEMORANDUM IN SUPPORT, and the Defendant's Opposition thereto, hereby grants the Motion and orders that:

Mr. Bret Smith shall not give testimony at trial as to patent invalidity and/or infringement, nor shall his reports be introduced into evidence or otherwise used in the presence of the jury. Finally, the Court will not allow (and will disregard any prior submitted) testimony of Mr. Smith as an expert regarding patent invalidity and/or infringement in connection with any summary judgment motion or other motion concerning the scope, infringement, or validity of the patent, whether by affidavit, deposition or otherwise.

SO ORDERED, THIS ____ DAY OF AUGUST, 2008.

Senior Judge W. Harold Albritton
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2008, I electronically filed the foregoing PLAINTIFF SIMPSON VENTURES, INC.'S MOTION IN LIMINE TO EXCLUDE EXPERT REPORTS AND TESTIMONY OF DEFENDANT'S EXPERT, BRET H. SMITH UNDER *DAUBERT V. MERRELL DOW PHARMACEUTICALS, INC.*, including MEMORANDUM IN SUPPORT, with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorney of record:

James M. Hinshaw
Bingham McHale LLP
2700 Market Tower
10 W. Market Street
Indianapolis, IN 46204-4900
(317) 635-8900
Pro Hac Vice

Brett A. Ross
Carr Allison
100 Vestavia Parkway
Birmingham, Alabama 35216
(205) 822-2006

Attorneys for Defendant

/s/ Arthur A Gardner

Arthur A. Gardner
GA Bar No. 283,995
Email: agardner@gardnergroff.com
GARDNER GROFF, GREENWALD
& VILLANUEVA, P.C.
2018 Powers Ferry Road, Suite 800
Atlanta, Georgia 30339
Tel: (770) 984-2300
Fax: (770) 984-0098
Attorneys for Plaintiff